

REMARKS

Applicant thanks the Patent Office for acknowledging Applicant's claim to foreign priority, and for indicating that the certified copy of the priority document, Japanese Patent Application No. 2001-006773 dated January 15, 2001, has been made of record in the file.

Applicant requests that the Patent Office indicate, in the next Communication, if the drawings filed on January 14, 2002 are acceptable.

Claims 1-17 have been examined on their merits.

Applicant herein editorially amends claims 1, 2, 7, 8, 11, 13, 14 and 16 for reasons of precision of language. The amendments to claims 1, 2, 7, 8, 11, 13, 14 and 16 were not made for reasons of patentability, do not narrow the literal scope of the claims and thus do not implicate an estoppel in the application of the doctrine of equivalents. The art-based rejections of claims 1-17 are traversed in detail below, and the reasons for traversal are entirely unrelated to the amendments to claims 1, 2, 7, 8, 11, 13, 14 and 16. Entry and consideration of the amendments to claims 1, 2, 7, 8, 13, 14 and 16 is respectfully requested.

Claims 1-17 are all the claims presently pending in the application.

1. Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Barker *et al.* (U.S. Patent No. 5,931,916). Applicant traverses the rejection of claims 1-17 for at least the reasons discussed below.

The initial burden of establishing that a claimed invention is *prima facie* obvious rests on the USPTO. *In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). To make its *prima facie* case

of obviousness, the USPTO must satisfy three requirements:

- a) The prior art relied upon, coupled with the knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the artisan to modify a reference or to combine references. *In re Fine*, 837 F.2d 1071, 1074 (Fed. Cir. 1988).
- b) The proposed modification of the prior art must have had a reasonable expectation of success, as determined from the vantage point of the artisan at the time the invention was made. *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F.2d 1200, 1209 (Fed. Cir. 1991).
- c) The prior art reference or combination of references must teach or suggest all the limitations of the claims. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991); *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, the nature of a problem to be solved. *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999). Alternatively, the motivation may be implicit from the prior art as a whole, rather than expressly stated. *Id.* Regardless of whether the USPTO relies on an express or an implicit showing of motivation, the USPTO is obligated to provide particular findings related to its conclusion, and those findings must be clear and particular. *Id.* A broad conclusionary statement, standing alone without support, is not “evidence.” *Id.*; see also, *In re Zurko*, 258 F.3d 1379, 1386 (Fed. Cir. 2001).

In addition, a rejection cannot be predicated on the mere identification of individual components of claimed limitations. *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000). Rather,

particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. *Id.*

The Patent Office acknowledges that AAPA fails to teach or suggest a table having a management order of a host computer to be managed, checking a flag in the table and transmitting a life-and-death monitoring packet to a subsequent host computer. *See* May 11, 2004 Non-Final Office Action, pg. 4. The Patent Office alleges, however, that Barker *et al.* overcomes the acknowledged deficiencies of the AAPA.

The combination of AAPA and Barker *et al.* fails to teach or suggest at least the transmitting a life-and-death monitoring packet comprising a table of addresses and check flags to a plurality of host computers, wherein the table addresses are the addresses of the host computers, as recited in claim 1. Furthermore, the combination of AAPA and Barker *et al.* fails to teach or suggest at least transmitting the life-and-death monitoring packet from one host computer to another host computer according to the management order set forth in the table included in the life-and-death monitoring packet, as recited in claim 1. At best, the combination of AAPA and Barker *et al.* disclose a method of sending individual life-and-death monitoring packets between a management computer and a plurality of host computers, wherein the management computer repeatedly sends each host computer a different monitoring packet and the management computer can use different addresses to reach the same host computer.

The Patent Office alleges that the combination of AAPA and Barker *et al.* disclose that messages are sent sequentially from a transmitting node to a receiving node. Applicant agrees

that the Patent Office's characterization of the combination of AAPA and Barker *et al.* is correct only to the extent that the messages are sequentially transferred between the same two nodes.

The combination does not teach or suggest that a message is transferred from a transmitting node to a first receiving node, and thence from the first receiving node to a second receiving node. At column 5, lines 57-64, Barker *et al.* disclose that more than one process can transfer data between a source node and a destination node, and that such data will be sequentially transferred. However, Barker *et al.* do not teach or suggest that the sequentially transferred data is transferred from a transmitting node to a first receiving node, and then from the first receiving node to a second receiving node. The sequential data transfers remain between the two nodes, and no other nodes. In contrast to the combination of AAPA and Barker *et al.*, the invention recited in claim 1 sequentially transfers a monitoring packet through a list of nodes, wherein the list of node addresses is contained in the monitoring packet itself.

The Patent Office further alleges that the combination of AAPA and Barker *et al.* disclose a list of network addresses and that these addresses are cyclically used. Applicant agrees that the Patent Office's characterization of the combination of AAPA and Barker *et al.* is correct only to the extent that the list of network addresses all point to the same node, and not to different nodes within the network. For example, Barker *et al.* disclose that the address list for a logical (RDP) address may comprise more than one Internet address, and that these addresses can be used cyclically. *See, e.g.*, col. 4, lines 34-39 of Barker *et al.* Although there are several addresses to be used, they all point to the same node. *See, e.g.*, col. 4, lines 7-10; Fig. 4B of Barker *et al.* While the combination of AAPA and Barker *et al.* might transfer the same message

to different addresses contained in a list, those listed addresses all point to the same node, and therefore, the message always is transmitted to the same node. In contrast, the invention recited in claim 1 sequentially transfers a monitoring packet through a list of different nodes based on the address list contained within the monitoring packet. Thus, Applicant submits that the Patent Office cannot fulfill the “all limitations” prong of a *prima facie* case of obviousness, as required by *In re Vaeck*.

Since neither AAPA nor Barker *et al.* teach or suggest the structure of the monitoring packet or the sequential transfer of the monitoring packet between multiple nodes, Applicant submits that one of skill in the art would not be motivated to combine the two references. *In re Dembiczak* and *In re Zurko* require the Patent Office to provide particularized facts on the record as to why one of skill would be motivated to combine the two references. Without a motivation to combine, a rejection based on a *prima facie* case of obviousness is improper. *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998)). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308 (Fed. Cir. 1999). The Patent Office must make specific factual findings with respect to the motivation to combine references. *In re Lee*, 277 F.3d 1338, 1342-44 (Fed. Cir. 2002).

Although the Patent Office provides a motivation analysis with respect to improvement of network throughput and bandwidth management, both the AAPA and Barker *et al.* lack any teaching about the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. One of ordinary skill would not be motivated to combine Barker *et al.* with the AAPA to arrive at the present invention, since

all Barker *et al.* provides are alternative paths between the same transmitting and receiving nodes. Network throughput would not be improved, since the network would still have to transfer multiple messages between nodes, instead of a monitoring packet transferred sequentially through the nodes. Thus, Applicant submits that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness, as required by *In re Dembiczak* and *In re Zurko*.

Based on the foregoing reasons, Applicant submits that the combination of AAPA and Barker *et al.* fails to teach or suggest all of the claimed elements as arranged in claim 1. Therefore, the combination of AAPA and Barker *et al.* clearly cannot render the present invention obvious as recited in claim 1. Thus, Applicant submits that claim 1 is allowable, and further submits that claims 2-6 are allowable as well, at least by virtue of their dependency from claim 1. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 1-6.

With respect to independent claim 7, Applicant submits that claim 7 is allowable for at least the same reasons discussed above with respect to claim 1, in that the combination of AAPA and Barker *et al.* fails to teach or suggest at least the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. Thus, Applicant submits that claim 7 is allowable, and further submits that claims 8-12 are allowable as well, at least by virtue of their dependency from claim 7. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 7-12.

With respect to independent claim 13, Applicant submits that claim 13 is allowable for at least the same reasons discussed above with respect to claim 1, in that the combination of AAPA and Barker *et al.* fails to teach or suggest at least the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. Thus, Applicant submits that claim 13 is allowable, and further submits that claims 14-17 are allowable as well, at least by virtue of their dependency from claim 13. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 13-17.

2. Claims 1-17 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Kanamaru *et al.* (U.S. Patent No. 6,574,197). Applicant traverses the rejection of claims 1-17 for at least the reasons discussed below.

The Patent Office acknowledges that AAPA fails to teach or suggest a table having a management order of a host computer to be managed, checking a flag in the table and transmitting a life-and-death monitoring packet to a subsequent host computer. *See* May 11, 2004 Non-Final Office Action, pg. 14. The Patent Office alleges, however, that Kanamaru *et al.* overcomes the acknowledged deficiencies of the AAPA.

The combination of AAPA and Kanamaru *et al.* fails to teach or suggest at least the transmitting a life-and-death monitoring packet comprising a table of addresses and check flags to a plurality of host computers, wherein the table addresses are the addresses of the host computers, as recited in claim 1. Furthermore, the combination of AAPA and Kanamaru *et al.* fails to teach or suggest at least transmitting the life-and-death monitoring packet from one host

computer to another host computer according to the management order set forth in the table included in the life-and-death monitoring packet, as recited in claim 1. At best, the combination of AAPA and Kanamaru *et al.* disclose a method of sending individual life-and-death monitoring packets between a plurality of host computers, wherein address-adjacent host computers monitor each other and broadcast health status to the other host computers in the network.

The Patent Office alleges that the network status table of Kanamaru *et al.* is analogous to the monitoring packet of the present invention. However, the Patent Office overlooks the fact that the network status table is present in each node and it is not passed from node to node. *See, e.g.,* col. 4, lines 63-65 of Kanamaru *et al.* Furthermore, Kanamaru *et al.* do not disclose that the monitoring packet has a check table and address table of the present invention. Instead, Kanamaru *et al.* disclose that a REQUEST packet is sent to a neighboring node, and a RESPONSE packet is expected if the neighboring node is operational. There is no teaching or suggestion in Kanamaru *et al.* that the REQUEST and RESPONSE packets have any structure analogous to the monitoring packet of the present invention.

The Patent Office alleges that the combination of AAPA and Kanamaru *et al.* sequentially communicates the monitoring packets between nodes. Applicant agrees with this characterization of the combination of AAPA and Kanamaru *et al.* only to the extent that different packets are sent from the same transmitting node to different receiving nodes. Kanamaru *et al.* is cumulative to AAPA, in that both reference explicitly teach transmitting messages from one source node to multiple destination nodes, wherein each message is individually transmitted from the one source node to the multiple destination nodes. *See, e.g.,*

Figures 2, 3, 6 and 8 of Kanamaru *et al.* In sum, the combination fails to teach or suggest at least the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. Thus, Applicant submits that the Patent Office cannot fulfill the "all limitations" prong of a *prima facie* case of obviousness, as required by *In re Vaeck*.

Since neither AAPA nor Kanamaru *et al.* teach or suggest the structure of the monitoring packet or the sequential transfer of the monitoring packet between multiple nodes, Applicant submits that one of skill in the art would not be motivated to combine the two references. Although the Patent Office provides a motivation analysis with respect to improvement of data performance and data availability, both the AAPA and Kanamaru *et al.* lack any teaching about the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. One of ordinary skill would not be motivated to combine Kanamaru *et al.* with the AAPA to arrive at the present invention, since Kanamaru *et al.* is cumulative of the AAPA in that multiple messages are sent between individual host computers, thereby adding to the traffic load on the network. Similar to the shortcomings of Barker *et al.*, network throughput would not be improved since multiple messages would be sent between the individual processors, instead of a single monitoring packet sequentially transferred through the nodes. Thus, Applicant submits that the Patent Office cannot fulfill the motivation prong of a *prima facie* case of obviousness, as required by *In re Dembiczak* and *In re Zurko*.

Based on the foregoing reasons, Applicant submits that the combination of AAPA and Kanamaru *et al.* fails to teach or suggest all of the claimed elements as arranged in claim 1. Therefore, the combination of AAPA and Kanamaru *et al.* clearly cannot render the present invention obvious as recited in claim 1. Thus, Applicant submits that claim 1 is allowable, and further submits that claims 2-6 are allowable as well, at least by virtue of their dependency from claim 1. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 1-6.

With respect to independent claim 7, Applicant submits that claim 7 is allowable for at least the same reasons discussed above with respect to claim 1, in that the combination of AAPA and Kanamaru *et al.* fails to teach or suggest at least the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. Thus, Applicant submits that claim 7 is allowable, and further submits that claims 8-12 are allowable as well, at least by virtue of their dependency from claim 7. Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 7-12.

With respect to independent claim 13, Applicant submits that claim 13 is allowable for at least the same reasons discussed above with respect to claim 1, in that the combination of AAPA and Kanamaru *et al.* fails to teach or suggest at least the monitoring packet's structure with respect to node addresses or the sequential transfer of the monitoring packet between nodes within a network. Thus, Applicant submits that claim 13 is allowable, and further submits that claims 14-17 are allowable as well, at least by virtue of their dependency from claim 13.


AMENDMENT UNDER 37 C.F.R. § 1.111
U.S. APPLN. NO. 10/043,170
ATTORNEY DOCKET NO. Q68031

Applicant respectfully requests that the Patent Office withdraw the § 103(a) rejection of claims 13-17.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,


Paul J. Wilson
Registration No. 45,879

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Date: July 26, 2004